

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DARYL ROGERS,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF  
CORRECTIONS, et al.

Defendants.

Case No.: 21-cv-5011-BJR-TLF

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND  
GRANTING SUMMARY JUDGMENT  
TO DEFENDANT DANDEE YOUNG

**I. INTRODUCTION**

Plaintiff Daryl Rogers brings this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against multiple defendants associated with the Washington Department of Corrections, including Defendant Danee Young who is a doctor at Stafford Creek Corrections Center. Plaintiff alleges that Dr. Young violated Plaintiff's First and Eighth Amendment rights, as well as acted negligently towards him in violation of Washington State law, while he was her patient. Currently before the Court is the Report and Recommendation of Magistrate Judge Theresa L. Fricke in which she recommends that this Court grant Dr. Young's motion for summary judgment. Dkt. No. 130. Having reviewed the Report and Recommendation, the summary judgment motion, response, and reply thereto, Plaintiff's objections to the Report and

1 Recommendation, the response and reply to the objections, the record of the case, and the  
2 relevant legal authority, the Court will adopt the Magistrate Judge's recommendation and grant  
3 summary judgment to Dr. Young. The reasoning for the Court's decision follows.

## 4 **II. BACKGROUND**

5 Plaintiff currently resides at Monroe Correctional Complex-Twin Rivers; however,  
6 during the time that he was under Dr. Young's care, he was housed at Stafford Creek Corrections  
7 Center, and before that, he was housed at Coyote Ridge Corrections Center. Plaintiff alleges that  
8 prior to his criminal conviction, he sustained a serious neck injury in a motor vehicle accident  
9 that resulted in significant left-side neck muscle contracture and secondary atrophy. He further  
10 alleges that while he was housed to Coyote Ridge, he was issued a Health Status Report ("HSR")  
11 that allowed him to eat his meals in his cell due to his neck injury ("the meals HSR"), but once  
12 he was transferred to Stafford Creek, the meals HSR was rescinded. Plaintiff claims that after he  
13 filed several grievances on the matter, he was issued a wheelchair to use at mealtime.

14 On June 17, 2020, Plaintiff fell, and Dr. Young examined him the next day. She  
15 diagnosed Plaintiff with cervical muscle contracture, secondary disuse atrophy, and right  
16 shoulder bruising and pain. Dr. Young prescribed non-steroidal anti-inflammatories and neck  
17 exercises. During this appointment, Plaintiff informed Dr. Young that he was using the  
18 wheelchair to ambulate for all activities as opposed to just mealtime and Dr. Young advised him  
19 of the risks of further atrophy associated with disuse due to continued use of the wheelchair. She  
20 then removed his access to the wheelchair and prescribed a seated, four-wheeled walker instead.

21 Dr. Young saw Plaintiff again approximately one month later. During this appointment  
22 Plaintiff reported that the walker was helping with his mobility and that he had improved neck  
23 flexion. Nevertheless, Plaintiff requested that he have access to a wheelchair again, which Dr.

1 Young denied on the grounds that the walker provided the same amount of support for his neck,  
2 there had been improvement in flexion, and continued use of the wheelchair could lead to further  
3 atrophy. This was Dr. Young's last appointment and interaction with Plaintiff.

4 Plaintiff alleges that Dr. Young inflicted cruel and unusual punishment on him when she  
5 denied him the meals HSR and by not issuing him a reasonable alternative to the meals HSR. He  
6 further contends that she retaliated against him in violation of his First Amendment rights by  
7 removing his access to a wheelchair and issuing him a seated walker instead because he  
8 complained and wrote grievances about being denied access to a wheelchair.

### 9 III. LEGAL STANDARD

10 Under the Federal Magistrates Act, a district court may assign a magistrate judge to  
11 determine any pretrial matter except motions for injunctive relief, judgment on the pleadings,  
12 summary judgment, class certification, or dismissal involuntarily or for failure to state a claim.  
13 28 U.S.C. § 636(b)(1)(A). For those motions, a magistrate judge may make only findings and  
14 recommendations regarding dispositive matters. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). A  
15 district judge must review *de novo* those portions of proposed findings and recommendations to  
16 which a party objects. *Id.* The district judge may accept, reject, or modify, in whole or in part, the  
17 recommended disposition; receive further evidence; or return the matter to the magistrate judge  
18 with instructions. *Id.*; *Solano v. Kroger Co.*, 2020 WL 7028473, at \*1 (D. Or. Nov. 30, 2020)  
19 (“The court is not bound by the recommendations of the magistrate judge but retains  
20 responsibility for making the final determination.”).

21 Summary judgment is proper only if there is no genuine issue as to any material fact and  
22 the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). The moving party is  
23 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient

1 showing on an essential element of a claim in the case on which the nonmoving party has the  
2 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of  
3 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for  
4 the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
5 (1986). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence  
6 supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions  
7 of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986).

#### 8 IV. DISCUSSION

9 Magistrate Judge Fricke recommends that this Court grant summary judgment to Dr.  
10 Young on both of Plaintiff's claims against the doctor. The Magistrate Judge concludes that the  
11 record is devoid of any evidence that the doctor was deliberately indifferent to Plaintiff's medical  
12 needs and is likewise devoid of any evidence that she retaliated against Plaintiff for filing  
13 grievances regarding the disallowed wheelchair. Plaintiff objects to "the entire Report [a]nd  
14 Recommendation" because it addresses his care after he fell as opposed to "Dr. Young's failure  
15 to provide [him] access to mainline meals." Dkt. No. 132 at 1-2. Plaintiff argues that because the  
16 Report and Recommendation fails to address Dr. Young's alleged failure to provide him access  
17 to mainline meals, this Court should decline to adopt it.

18 The Court assumes that by claiming that Dr. Young failed to give him "access to  
19 mainline meals" Plaintiff is alleging that the doctor is responsible for the revocation of his meals  
20 HSR accommodation when he arrived at Strafford Creek. However, Plaintiff's complaint is  
21 devoid of factual allegations to suggest that Dr. Young was in anyway involved in the decision to  
22 revoke the meals HSR accommodation. Rather, the factual allegations in the complaint assert  
23 that Dr. Kenney, Dr. Herrington, MA Harder, and multiple other corrections officers were

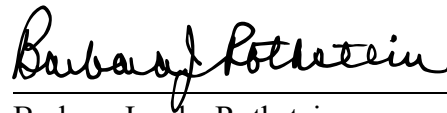
1 responsible for the accommodation removal.<sup>1</sup> Nor did Plaintiff present any evidence in his  
 2 opposition to Dr. Young's motion for summary judgment to suggest that she was responsible for  
 3 revoking the HSR accommodation. Thus, Plaintiff's unsupported, conclusory allegation that Dr.  
 4 Young denied him "access to mainline meals" is insufficient to defeat summary judgment.

5 As for Plaintiff's claim that Dr. Young violated his constitutional rights by removing his  
 6 access to a wheelchair, the Magistrate Judge determined that the record is devoid of any evidence  
 7 that Dr. Young was deliberately indifferent to Plaintiff's medical needs. Rather, Dr. Young  
 8 exercised her professional judgment, determined that continued use of the wheelchair would be  
 9 detrimental to Plaintiff, and ordered that he use a walker instead. Plaintiff failed to address this  
 10 determination in his objections to the Report and Recommendation and while this Court is not  
 11 required to review "any issue that is not the subject of an objection", *Thomas v. Arn*, 474 U.S.  
 12 140, 149 (1985), the Court has reviewed this portion on the Report and finds no error.

### 13 V. CONCLUSION

14 For the foregoing reasons, the Court HEREBY OVERRULES Plaintiff's objections and  
 15 ADOPTS the Report and Recommendation. Plaintiff's claims against Dr. Young are dismissed  
 16 with prejudice and she is dismissed from this case.

17 Dated this 20th day of June, 2024.

18   
 19 Barbara Jacobs Rothstein  
 20 U.S. District Court Judge  
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22 <sup>1</sup> The complaint does state in conclusory fashion that Dr. Young "inflicted cruel and unusual punishment on plaintiff  
 23 by denying plaintiff his medically necessary 'meals HSR'" but this conclusory statement is wholly unsupported by  
 factual allegations. Dkt. No. 21 at ¶ 101. It is black letter law that the nonmoving party cannot defeat summary  
 judgment with conclusory, self-serving statements. *See e.g. F.T.C. v. Publishing Clearing House, Inc.*, 104 F.3d  
 1168, 1171 (9th Cir. 1997) (conclusory, self-serving statements are insufficient to create a genuine issue of material  
 fact).